

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

NEW RULES TO GOVERN CEMETERY)	Administrative Cause
RESTORATIONS, INCLUDING EXEMPTION)	Number: 08-106H
FROM SUBMITTING A "PLAN" TO THE)	
DIVISION OF HISTORIC PRESERVATION AND)	
ARCHAEOLOGY FOR A QUALIFIED CEMETERY)	(LSA Document #10-59(F))

**RULE PROCESSING, REPORT OF PUBLIC HEARING
AND RECOMMENDATION FOR FINAL ADOPTION**

1. RULE PROCESSING

For consideration is proposed 312 IAC 22-4 to govern licensure for activities in cemeteries to probe for fallen grave memorials, to recover grave memorials, and to restore them. For qualified activities within many older cemeteries, compliance with this rule exempts a project coordinator from meeting the vigorous licensure requirements, including the development of "an archaeological plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages." See 312 IAC 21-3 and 312 IAC 22-2. For the past two years, a very similar regulatory structure has been implemented through temporary rules adopted by the Director of the Department of Natural Resources. These were LSA Document #08-899(E) and LSA Document #09-773(E).

The Natural Resources Commission gave preliminary adoption to the proposed permanent rule during its meeting of November 17, 2009. As reported in the pertinent portions of the minutes:

[James Glass, Ph.D., Director of the Division of Historic Preservation and Archaeology (the "DHPA")]... presented this item. He said the proposed rule would provide an expedited procedure for obtaining a permit "for the many cemetery restoration advocates in Indiana who wish to restore fallen memorials and headstones in historic cemeteries." Glass reported a temporary rule has been in effect since 2008 to govern the subject, and the proposal would make permanent the temporary rule. The expedited application process has been "well received by the advocates". Glass said the DHPA provides a training program for those "who wish to coordinate a project to restore fallen memorials or headstones." Successful completion of the training qualifies individuals for a DHPA "cemetery restoration license" to oversee restoration projects. Glass recommended the proposed rule be given preliminary adoption.

Brian Blackford moved to give preliminary adoption of new rule, 312 IAC 22-5, to provide expedited procedures under IC 14-21-1-26 for a person to obtain a cemetery restoration li-

cense from the Department's Division of Historic Preservation and Archaeology. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

A "notice of intent" to adopt the proposed rule amendments was posted in the Indiana REGISTER on February 3, 2010 as LSA Document #10-59. The notice identified James Glass, Ph.D., as the "small business regulatory coordinator".

As specified by Executive Order, proposed fiscal analyses of the rule proposal were submitted to the Office of Management and Budget on February 10, 2010. In an August 5, 2010 letter, OMB approved the proposed fiscal analyses.

On August 10, 2010, the Division of Hearings submitted a copy of the proposed rule and corresponding "Economic Impact Statement" to the Legislative Services Agency. LSA provided an intended date for publication of August 25, 2010. On August 13, the Division of Hearings provided LSA with a "Notice of Public Hearing" (with a "Justification Statement"). Later on August 13, LSA issued to the Commission an "authorization to proceed" with the rule proposal.

A public hearing on the rule proposal was scheduled for September 27, 2010 in Room N501, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana. Notice of the public hearing and the text of the proposed amendments were posted in the Indiana REGISTER on August 25, 2010. This notice included the statement under IC 4-22-2.1-5 concerning rules affecting small businesses. The notice also included information required under IC 4-22-2-24. Notice of the public hearing with similar information was published on August 27, 2010 in the Indianapolis DAILY STAR, a newspaper of general circulation published in Marion County, Indiana. In addition, notice of the public hearing and a summary of the proposed rule were published on the calendar of the Commission's website.

2. REPORT OF PUBLIC HEARING AND COMMENTS

A. Report of Public Hearing

The public hearing was convened in Indianapolis as scheduled on September 27, 2010. James Glass appeared as Director of DHPA and as the Small Business Regulatory Coordinator. Jeannie Regan-Dinius appeared as Special Project Coordinator for DHPA. No member of the public appeared.

B. Comments byEmail

The following comments were received by email:

Jan Shupert-Arick, Allen, IN, Porter Rea Cemetery Association (July 21, 2010)

I support the right to probe for buried tombstones in historic cemeteries. Many stones have been buried by those not understanding the importance of keeping stones in place or through vandalism. This would assist with preservation efforts and understanding the historical context of cemeteries.

Wayne A. Langman, Seelyville, IN, Friends of Seelyville (July 22, 2010)

I am a certified graduate of the Tombstone Restoration training program provided by the State approved instructors. For two years I have worked in Lost Creek Township to restore the eleven cemeteries cared for by the Township. We trained a crew of helpers and are paid a minimum wage to cover our time and expenses. Two years ago we applied for our first permit and to this day have received no contact from the DNR at all. No permit, no follow up call, no nothing. These new rules will definitely have an impact on the process. They will bring to an end most efforts to restore cemeteries among the smaller townships and communities. The extra hassle and paperwork, along with the need to get a license, will drive up the costs and insure that they will be unable to afford the work. Local governments have a legal and moral obligation to keep these resting places in good repair, but most lack the budget to do more than mow the grass. These rules won't help at all. There are those among the DNR who seek to be "on the cutting edge" or "ahead of the curve" in controlling things. But they don't seem to understand that change for change sake isn't always a good idea.

DNR, Division of Historic Preservation and Archaeology Response to Langman Comments:

Following Langman's July 22 email comment, DHPA reviewed its records and was unable to confirm that he applied for a permit in 2008. Langman was contacted, and he responded on September 27, 2010: "I am very sorry for the confusion. Our request was through the Lost Creek Township Trustee, Mr. Rick Long, who may well have applied under his office for the permits as the work was on township maintained properties." DHPA again reviewed its records and was unable to confirm an application by the Lost Creek Township Trustee or by Rick Long. On September 28, 2010, DHPA emailed Langman to indicate no application was located from the Lost Creek Township Trustee. Jeannie Regan-Dinius, DHPA Special Project Coordinator, informed Langman: "Since you took the cemetery preservation class, all I would need from you to process the probing application is to fill out the attached permit request. Send this in with written permission from the landowner. I hope this clears up any confusion. If not, don't hesitate in giving me a call."

Thomas D. Ketchem, Rensselaer, IN (July 22, 2010)

I think this is great and have a Ketchem Family Cemetery and the state has removed the headstones that have fallen, it's a shame what they have done to this cemetery-Daviess County.

3. RECOMMENDATION FOR FINAL ADOPTION

The proposed rule is responsive to a series of legal reforms enacted by the Indiana General Assembly since 1989 to help protect the sanctity of human remains and memorials, particularly for grave sites that pre-date the formalities and protections of the 1939 cemetery law. The earlier of these reforms were directed primarily to grave sites predating statehood in 1816, but more recently legislative attention was directed to what are sometimes called "pioneer cemeteries"—most of which were active after 1816 but predate the 1939 law. Illustrative is cemetery preservation legislation enacted in 1999 at IC 14-21-2, as well as more recent amendments to historic preservation statutes that have continued almost to the present.

Proposed 312 IAC 22-4 would assist in implementing these statutory reforms. Standards are set for cemetery restorations. A process is established for the Division of Historic Preservation and Archaeology to assist with training and regulating citizens who wish to restore cemeteries, perhaps most notably through the repair of grave memorials in ways that help retain rather than detract from the historic and social integrity of a cemetery. Limits are placed on the purposes for which an expedited license for the restoration of a cemetery may be used. A cemetery which qualifies as a historic site or historic structure and is located on State lands is disqualified from the expedited license. In its genesis as consecutive one-year temporary rules, the new process has enjoyed general success. For the vast majority of pioneer cemeteries, proposed 312 IAC 22-4 would exempt restoration projects from the level of scrutiny reserved for historic sites and historic structures. As articulated through 312 IAC 22-4, the costs associated with requiring an “archaeological plan” are not applied to most cemetery restorations.

As published for preliminary adoption, the proposed new rule appears to be lawful and is ripe for final adoption. Final adoption is recommended as set forth below.

Dated: October 14, 2010

Jennifer Kane, Hearing Officer

Dated: October 14, 2010

Stephen Lucas, Hearing Officer

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #10-59(F)

DIGEST

Adds 312 IAC 22-4 to govern licenses for activities in cemeteries to probe for fallen grave memorials, to recover grave memorials, and to restore them. Effective 30 days after filing with the Publisher.

312 IAC 22-4

SECTION 1. 312 IAC 22-4 IS ADDED TO READ AS FOLLOWS:

Rule 4. Expedited License for a Qualified Cemetery Restoration Project

312 IAC 22-4-1 Application

Authority: IC 14-10-2-4; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 1. (a) This rule provides an expedited licensure process for cemetery restoration.

(b) A person who qualifies for and complies with this rule is not required to obtain approval of a plan under 312 IAC 21-3-3 or a permit under 312 IAC 22-2-3.

(c) A license is not available under this rule for either of the following:

- (1)** A cemetery that is part of a historic site or historic structure owned by the state.
- (2)** A project that includes activities other than cemetery restoration.

(Natural Resources Commission; 312 IAC 22-4-1)

312 IAC 22-4-2 Additional definitions

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. (a) The definitions in this section are in addition to those in IC 14 and 312 IAC 1 and apply throughout this rule.

(b) “Cemetery” means any land or structure in Indiana that is:

- (1)** dedicated to; and
- (2)** used for, or intended to be used for;

the internment, entombment, or inurnment of humans remains.

(c) “Cemetery restoration” refers to the following:

- (1)** Probing the ground of a cemetery.
- (2)** Recovering, restoring, and resetting a fallen grave memorial.

(d) “Grave memorial” refers to a gravestone, monument, grave marker, or any other type of similar item that is located in a cemetery and used to mark the burial of human remains.

(e) “Probing” means inserting an object into the ground, to a depth not greater than six (6) inches, for the purpose of locating a fallen grave memorial in a cemetery. *(Natural Resources Commission; 312 IAC 22-4-2)*

312 IAC 22-4-3 Application for cemetery restoration license

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 3. (a) A person who wishes a cemetery restoration license must submit a written application to the division.

(b) The applicant must provide the division with the following:

- (1) The location of the cemetery. An applicant must not include more than one (1) cemetery in a license application.**
- (2) A document from the cemetery owner showing permission to provide cemetery restoration.**
- (3) If land owned by a person other than the owner of the cemetery would be crossed to access the cemetery, a document showing permission to perform the crossing.**
- (4) Who would be the coordinator of the cemetery restoration.**
- (5) Any other information reasonably required by the division form referenced in subsection (a).**

(Natural Resources Commission; 312 IAC 22-4-3)

312 IAC 22-4-4 Identification of a permanent visible boundary for a cemetery

Authority: IC 14-10-2-4; IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 4. For a cemetery, which is not marked by a permanent visible boundary, the division may require an applicant to identify the boundary as a condition for approval of a cemetery restoration. The applicant may use land records, surveys, historical records, and any other relevant sources to help identify the boundary. *(Natural Resources Commission; 312 IAC 22-4-4)*

312 IAC 22-4-5 Qualification as coordinator

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 5. (a) The division shall establish minimum training standards that a coordinator of a project for cemetery restoration must meet. Those standards shall include successful completion of training in the appropriate techniques for each of the following:

- (1) Probing in a cemetery to locate a fallen grave memorial.**
- (2) Recovering a fallen grave memorial.**
- (3) Restoring a fallen grave memorial.**
- (4) Resetting a grave memorial in the cemetery.**

(b) “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes” (U.S. Department of the Interior, National Park Service, 1996) is the professional guide for training a coordinator.

(c) A person who does not satisfy the minimum standards set forth in this section cannot serve as a coordinator under this rule. *(Natural Resources Commission; 312 IAC 22-4-5)*

312 IAC 22-4-6 Approval of cemetery restoration license

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 6. (a) The division may issue a written license to a coordinator for a project for cemetery restoration that satisfies this rule. The license shall require compliance with this rule and may include special conditions if otherwise needed for compliance with IC 14-21-1.

(b) Except as provided in this subsection, a license issued under subsection (a) expires one (1) year after issuance. The division may, on one (1) occasion, renew a license under subsection (a) for a period not longer than one (1) year. *(Natural Resources Commission; 312 IAC 22-4-6)*

312 IAC 22-4-7 Reports after project completion

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 7. (a) The coordinator must submit a report to the division within sixty (60) days of the earlier of the following events:

- (1) Completion of the project for cemetery restoration.**
- (2) The expiration of a license, including any period of license renewal, under section 6(b) of this rule.**

(b) The report must include each of the following:

- (1) A summary of the work conducted.**
- (2) Documentation for grave memorials that were recovered or restored.**
- (3) A map showing the location of any work.**
- (4) Other information if required by a license issued under section 6 of this rule.**

(c) The division shall review the report and inform the coordinator whether the:

- (1) work described meets the standards of the division; and**
- (2) report is complete and acceptable.**

(d) The division may issue a license to the coordinator for another project or projects for a cemetery restoration, if the division informs the coordinator that the work described in a project report:

- (1) meets the standards of the division; and**
- (2) is complete and acceptable.**

(e) Except as provided in subsection (f), the division shall not issue another license to a coordinator under this rule if a coordinator does not submit a report as required by any of the following:

- (1) Subsection (a).**
- (2) During the periods of their effectiveness:**
 - (A) SECTION 7(a) of LSA Document #08-899(E); and**
 - (B) SECTION 7(a) of LSA Document #09-773(E).**

(f) The division may issue another license for a cemetery restoration, if a report is submitted after the periods described in subsection (e), and the division determines the delinquent submission of the report did not cause significant harm. (*Natural Resources Commission; 312 IAC 22-4-7*)